LEE YEW HIN v. KOW LUP PIOW

[F.C. (Suffian C.J., Gill and Ong Hock Sim F.JJ.) January 16, 1974]

[Kuala Lumpur — Federal Court Civil Appeal No. 44 of 1972]

Contract — Agreement for purchase of land — Deposit paid — Agreement to make final payment on fixed date — Failure to make payment — Breach of contract — Forfeiture of deposit.

The appellant had entered into a contract with the respondent for the purchase of 105 acres out of about 1045 acres of rubber land. The respondent himself had agreed to purchase the lands from a third person. A deposit of $22,000 was paid by the appellant and it was agreed that the balance of the purchase price should be paid on or before the 20th November, 1967. The appellant did not pay the balance of the purchase price on that date, and the deposit was forfeited. The appellant brought an action for rescission of the contract, for the refund of the sum of $22,000 and for damages. It was argued that there was misrepresentation on the part of the respondent that he was the owner of the land which induced the appellant to enter into the agreement. The learned trial judge held that there had been no misrepresentation and that the deposit of $22,000 was an earnest to bind the contract entered into and had therefore been rightly forfeited. The appellant appealed.

Held: (1) the agreement in this case was fully explained to the appellant and he knew that the respondent was not the registered proprietor of the lands and that it was only upon the final payment by the appellant that the respondent could obtain a registrable transfer of the lands from the person from whom he had agreed to buy the lands;

(2) the appellant had bound himself to pay the balance of the purchase price on 20 November 1967 and as he had failed to do so, he had committed a breach of the contract and the respondent was entitled to repudiate the contract and forfeit the deposit;

(3) although the deposit in this case was more than 10% of the purchase price, the forfeiture was not challenged on the ground that the amount forfeited was unreasonable or excessive. Moreover there was evidence that the respondent had suffered damages in excess of the amount forfeited.

Cases referred to:-

(1) *Gordon Hill Trust Ltd.* v. *Segall* [1941] 2 All E.R. 379.

(2) *Howe* v. *Smith* (1884) 27 Ch. D. 89.

(3) *Linggi Plantations Ltd.* v. *Jagathesan* [1972] 1 M.L.J. 89.

(4) *Aberfoyle Plantations Ltd.* v. *Khaw Biau Chung* [1960] M.L.J. 47.

FEDERAL COURT.

H. B. Ball (*Selvarajah* and *S. Periasamy* with him) for the appellant.

R. R. Chelliah (*Michael Chong* with him) for the respondent.

Gill F.J.: This is an appeal by the plaintiff against the dismissal by Wan Suleiman J. of his action in which his claim against the defendant was for the rescission of a contract between him and the defendant for the sale of land, for the refund of a sum of $22,000 which he paid to the defendant as a deposit under the contract and for general damages due to loss of the benefit of the purchase.

The facts of the case briefly are that by an agreement in writing dated 30th August 1967 the plaintiff agreed to purchase from the defendant-respondent approximately 105 acres out of about 1045 acres of rubber land held under Certificates of Title Nos. 4600 and 4430 for Lots Nos. 1113 and 876 respectively in the Mukim of Labu in the District of Seremban in the State of Negri Sembilan. The defendant himself had agreed to purchase the said lands under an agreement in writing dated 21st August 1967 from one Loy Hean Heong, who in turn had agreed to purchase the said lands together with six other pieces of land, approximately 2003 acres in area, from Sepang Nilai Estate Sendirian Berhad under an agreement dated 18th August 1967.

The agreement between the plaintiff and the defendant (exhibit P1) was prepared by a solicitor, Mr. Seah Choon Chye, acting for both parties. The recital to the agreement mentioned the agreement between the defendant and Loy Hean Heong (exhibit B) as "the Principal Agreement" and described the defendant as the owner of the lands held under Certificates of Title Nos. 4600 and 4430 for Lots 1113 and 876 respectively. Clause 3 of the agreement provided that the sale of the portion of the land shall be subject to the completion of the purchase of the said lands by the defendant under the Principal Agreement.

Clause 7 of the agreement provided that the plaintiff shall irrevocably appoint the defendant to be his attorney to accept a transfer of the said portion of the lands and to apply for the subdivision and/or partition of the said lands for the purpose of obtaining a separate document of title to the said portion. There was also a provision under the same clause for the plaintiff to pay the cost of and incidental to the application for sub-division.

The purchase price under the agreement was $152,250. The plaintiff had paid the defendant a deposit of $12,000 on 25th July 1967. He paid a further deposit of $10,000 on the date of the agreement. The balance of the purchase price, being $130,250, was to be paid on or before 20th November 1967. The defendant was to give possession of the portion agreed to be sold to the plaintiff on or soon after the date of payment of the said sum of $130,250 and the amounts stipulated in Clause 7 as the cost of the sub-division (Clause 8). Upon the plaintiff making all those payments the defendant was to cause arrangements to be made for the plaintiff to be registered as an undivided shareholder of the said lands (Clause 12).

Clause 13 provided that, in the event of the defendant being unable through no fault on his part or owing to circumstances beyond his control to complete the purchase, he was to refund the deposit of $22,000 and any other sum paid by the plaintiff towards the purchase price together with 5% of such sums as liquidated damages. Clause 14 provided that if the plaintiff shall fail to pay the balance of the purchase price on or before the stipulated date, then the agreement shall *ipso facto* absolutely determine and all sums of money paid by the plaintiff shall be deemed to be forfeited to the defendant as liquidated damages for breach of contract by the purchaser.

On 13th November 1967 the defendant's solicitors wrote to the plaintiff informing him that the amount to be paid by him to account of the balance of the purchase price together with sub-division fees, transfer fees, registration fees and stamp duty was $136,113, and asking him to pay it on or before 20th November 1967. The plaintiff's solicitors wrote to the defendant's solicitors on 17th November 1967 to say that their client wished to inspect the relevant title deed

relating to the land in question before the completion of the transfer on or before 20th November 1967. The defendant's solicitors replied on 20th November 1967 to say that there had never been any representation on the part of the defendant that he was the *registered* proprietor of the subject-matter of the sale, so that the plaintiff's request to inspect the title deed was not in keeping with the purpose and object of the agreement. In the result, the plaintiff failed to pay the balance of the purchase price and the other sums stipulated under the agreement on or before the due date. Further correspondence ensued between the parties with the plaintiff's solicitors demanding repayment of the sum of $22,000 and the defendant's solicitors saying that it had become forfeited under the agreement, whereupon the plaintiff commenced his action in the High Court at Seremban on 21st February 1968.

The case as pleaded by the plaintiff in his re-amended statement of claim was that he signed the agreement under a mistake of fact owing to an oral misrepresentation by the defendant that he was the owner of the land in question and that on payment of the full purchase price he would cause the plaintiff or his nominee to be registered as an undivided shareholder of the portion of the land agreed to be sold.

The defendant in his defence to the re-amended statement of claim denied any misrepresentation on his part as alleged and averred that as the plaintiff failed to pay the balance of the purchase price on or before 20th November, 1967 as stipulated in the agreement, time being of the essence of the contract, the agreement was *ipso facto* absolutely determined so that the sum of $22,000 paid by the plaintiff was rightly forfeited under the agreement.

Thus the issues at the trial of the action were whether there was misrepresentation on the part of the defendant which induced the plaintiff to enter into the agreement, whether the plaintiff's default in paying the balance of the purchase price on 20th November 1967 entitled the defendant to forfeit the deposit, and whether the deposit was a penalty.

The plaintiff's evidence at the trial of the action was that on hearing from a friend that the defendant had a rubber estate for sale he saw the defendant at his office in Seremban. He then saw the estate with an employee of the defendant called Yong. Being satisfied with the estate, he saw the defendant again when he was told that the price would be $1,450 per acre, and that if he purchased more than 100 acres his name would be registered on the title on payment of the full purchase price after which he could go into possession and tap the rubber. On 25th July 1967 he paid the defendant a deposit of $12,000. The defendant said that he had not yet completed the purchase of the land and promised to return the deposit in the event of his failure to purchase. He next saw the defendant three weeks later when the defendant told him that he had completed the purchase. The defendant again told him that the land would be registered in his name on payment of the purchase price. On 30th August 1967 they went to the office of a lawyer, Mr. Michael Chong, where he paid a further sum of $10,000 and signed an agreement. A clerk in Mr. Michael Chong's office told him of the contents of the agreement briefly without reading it verbatim. What the clerk told him was that if he paid the full purchase price by 20th November 1967, his name would be entered on the title and the defendant would have the land sub-divided so that he could have a separate title to his share.

The defendant's evidence was that in July 1967, when one of his brokers brought the plaintiff to see him, he was negotiating with Loy Hean Heong for the purchase of 1045 acres of rubber land with the intention of selling it at a profit. He had known the plaintiff for more than 10 years. At that stage Loy Hean Heong had not entered into an agreement with Sepang Nilai Estate Sendirian Berhad, nor had he entered into an agreement with Loy. He therefore told the plaintiff that he had not yet purchased the land. The plaintiff came to see him again on 25th July 1967. He appeared to be very interested in the land and offered to pay a deposit of $12,000, being afraid that the land might be sold to others. He accepted the sum. On 30th August 1967 the plaintiff paid him a further deposit of $10,000 and signed an agreement to purchase 105 acres of the land. The agreement was prepared by a lawyer, Mr. Seah Choon Chye, in Michael Chong's office. Mr. Seah explained the contents of the agreement to the plaintiff. The plaintiff then had the agreement read and explained to him by the clerk of one Mr. Yong Sze Lim. After that Mr. Seah asked the plaintiff whether he understood the terms of the agreement. The plaintiff said that he did and signed the agreement.

The defendant further testified that he did not tell the plaintiff that the land would be transferred into his name when he paid the balance of the purchase price. What he told the plaintiff was that he could go on to the land towards the end of November 1967. He told the plaintiff that he was the owner of the land because of the agreement which he had with Loy, and he made it clear to the plaintiff that it would take some time for his name to be registered in the title after he had paid the full purchase price and fulfilled the other terms of the agreement.

Mr. Seah Choon Chye gave evidence on behalf of the defendant to say that he explained to the plaintiff about the existence of the agreement which the defendant had entered into with Loy Hean Heong for the purchase of two pieces of land out of which a portion was to be sold to him. He also explained to the plaintiff that completion of the sale of the portion which he was agreeing to purchase would be subject to the completion of the sale under the defendant's agreement with Loy. He further explained to the plaintiff that the placing of his name on the title deed would take months because there were various other sub-purchasers of the land, but that he would have possession much earlier than the actual transfer. Mr. Seah went on to say that the plaintiff understood the nature of the transaction. He said he would like to have the contents of the agreement explained to him by a friend of his. He was allowed to do so, after which he came back and said that he was prepared to sign the agreement.

On the evidence before him the learned trial judge found as a fact that Mr. Seah had made a full explanation of the agreement to the plaintiff and that the plaintiff had had the agreement explained to him by Mr. Yong's clerk, before he signed it. As regards the word "owner" in the preamble to the agreement, the learned judge found that this was the result of an oversight on the part of Seah. Moreover, the same word appeared in several subsequent agreements which the defendant had entered into with other people. Furthermore, any wrong impression which the word "owner" might have raised in the mind of the plaintiff should have been dispelled when clause 3 of the agreement was explained to him. In any event, since the defendant had a valid contract with Loy to purchase the land, he was in fact, on the authority of *Gordon Hill Trust Ltd.* v. *Segall*,[1] the owner in equity and therefore entitled to describe himself as the owner. In the result, the learned judge was satisfied that there was no misrepresentation on the part of the defendant or any one acting on his behalf to induce the plaintiff to enter into the agreement.

Having accepted the defendant's version of the nature of the explanation made to the plaintiff before he signed the agreement, the learned judge was unable to believe that the plaintiff had any misconception of any sort on the question of the defendant being the registered proprietor of the land. He therefore reached the conclusion that the plaintiff's refusal to pay the balance of the purchase price on or before the 20th November 1967 entitled the defendant under clause 14 of the agreement to forfeit the deposit.

As regards the plaintiff's contention that even if there had been a breach of contract forfeiture of the deposit was intended to operate as a penalty and was thus void, the learned judge found that on a proper construction of the agreement the deposit of $22,000 was not merely a part payment towards the purchase price but also an earnest to bind the bargain entered into (per Fry, in *Howe* v. *Smith*[2]). Having placed that construction on the contract, the learned judge went on to decide on the authority of *Linggi Plantations Ltd.* v. *Jagatheesan*[3] that the deposit had been rightly forfeited whether or not damage was proved. His Lordship then went on to say that in any event the defendant had suffered damages far in excess of the amount forfeited because he had to pay a further sum of $28,500 in order to get an extension of the date of completion from Loy and he suffered a loss of approximately $31,240 in selling the same land to other purchases. In the result, he dismissed the plaintiff's action with costs.

The dismissal of the action is criticised on several grounds which may be summarised as follows. The contract between the plaintiff and the defendant was ineffective. Even if time was of the essence of the contract, the defendant had neither completed the purchase of the lands under the Principal Agreement, nor was he able to deliver possession of the portion of the lands agreed to be sold to the plaintiff on or before 20th November, 1967. The learned trial judge failed to appreciate the effect of clause 8 of the Agreement which contained reciprocal promises to be performed by the parties simultaneously. As the defendant knew perfectly well that he would not be able to obtain possession of the lands under the Principal Agreement before 8th December 1967, his representation that he would deliver possession to the plaintiff on 20th November 1967 or soon thereafter was a false representation. The learned judge ought to have taken into consideration the fact that the plaintiff was at all material times anxious, able, ready and willing to complete the purchase. Clause 14 of the Agreement could come into operation only in the event of the defendant's completion of his purchase of the land under the Principal Agreement and his ability and readiness to deliver possession to the plaintiff on 20th November 1967. In the circumstances the learned judge ought to have held that as the defendant was not able to deliver possession on 20th November 1967 as agreed, he was in breach of the contract so that the plaintiff was entitled to repudiate the contract and have his money back.

It would seem abundantly clear from the evidence that this was a case of the plaintiff agreeing to purchase from the defendant a portion of the rubber estate which the defendant had agreed to purchase from Loy who in turn had agreed to purchase a much larger area from Nilai. The spacing of the three agreements was obviously meant to give sufficient time to each vendor to collect the purchase price from his own purchaser so as to be able to pay the purchase price to his own vendor on the due date. As the learned trial judge has observed in his grounds of judgment, the plaintiff's very reluctance to admit that he had had one previous land deal with the defendant showed a desire on his part to conceal his awareness well before this transaction that the defendant was a fragmenter of estates and that the present transaction was an exercise in fragmentation.

Had the plaintiff paid the balance of the purchase price by 20th November 1967 as agreed, the defendant would have been able in turn to comply with the terms of his agreement with Loy under which possession would have been given to the defendant on 8th December 1967. As the learned trial judge has said, it can hardly be argued that that date would not be "soon after" 20th November 1967. To quote the learned judge again, it was not any misunderstanding about the date on which he could go into occupation of the land which caused the plaintiff to decline to pay the balance of the purchase price, his case being that he refused to pay the balance of the purchase price when he discovered that the defendant had no title to the land. He admitted, however, that the defendant had never told him that he had such title. Moreover, there was nothing in the agreement to suggest that the defendant was the registered proprietor of the land on the date of the agreement.

I do not agree with the appellant's contention that the learned trial judge failed to appreciate the effect of clause 8 of the Agreement. It is clear from that clause that the plaintiff was to pay the balance of the purchase price on or before 20th November 1967 and that the defendant was to give possession either on the date of payment *or soon after that date.* It would therefore be correct to say that clause 8 contained reciprocal promises, but it would not be correct to say that the reciprocal promises were to be performed simultaneously. In other words, the defendant was

not obliged under the terms of the Agreement to give possession simultaneously with the payment of the balance of the purchase price. The Agreement clearly gave him reasonable time within which to deliver possession and thereafter to cause arrangements to be made for the plaintiff to be registered as an undivided shareholder of the land. Indeed, there was to be subdivision of the land so that the plaintiff could have a separate title to the portion of the land which he had agreed to purchase. All this clearly required time.

The appellant's contention that he was ready and willing at all material times to complete the purchase is based on his solicitor's letter of 6th December 1967. Now, it was stated in that letter that the plaintiff was prepared to go through the deal provided the defendant effected a valid and registrable transfer of the land in the name of the defendant and gave possession upon receipt of the entire balance of the purchase price. Thus the offer to complete the purchase was not an unqualified offer as it was made subject to a condition which the defendant was not required under the Agreement to fulfil and which in any event it was impossible for him to fulfil.

It was argued on behalf of the appellant that on that date on which he porported to forfeit the deposit under clause 14 of the Agreement the defendant had not even partially fulfilled his contract with Loy. I can find no substance in this argument. The plaintiff's obligation to pay on 20th November 1967 was not subject to the condition that the defendant should have fulfilled his obligations to Loy by that date. Indeed, the failure of the plaintiff to make the payment made it impossible for the defendant to meet his obligations to Loy. Reading the two Agreements together, it is clear that the plaintiff was to pay the defendant on 20th November 1967 and the defendant was to pay the major portion of his purchase price to Loy by 30th November 1967 so as to qualify for possession by 8th December 1967 and be able to put the plaintiff in possession on that date. Counsel for the appellant contended that it was impossible to reconcile the date on which the defendant was required to give possession to the plaintiff with the date on which the defendant himself was entitled to obtain possession from Loy. This is nothing more than a repetition of the argument that the defendant was required to give possession to the plaintiff on 20th November 1967. I therefore cannot accept this contention.

As I have already said, one of the grounds of appeal is that the Agreement between the parties was ineffective so that the plaintiff was entitled to the refund of his money. On the basis of that ground and the other grounds which I have summarised, the major ground of appeal is that the contract between the plaintiff and the defendant was a conditional contract. If I understood counsel for the plaintiff correctly, the condition was said to be that the sale under the Principal Agreement between the defendant and Loy should have been completed before the date on which the plaintiff was required to complete his purchase. The authority relied on by counsel for the appellant for the proposition that the contract in this case was a conditional contract is the case of *Aberfoyle Plantations Ltd.* v. *Khaw Bian Cheng.*[4] That was a case in which clause 4 of the agreement provided that the purchase was conditional on the vendor obtaining the renewal of the seven leases so as to be in a position to transfer the sale to the purchaser and that if for any reason whatsoever the vendor was unable to fulfil this condition, the agreement shall be null and void and the vendor shall refund to the purchaser the deposit or deposits already made. With great deference to counsel for the appellant, I cannot see what bearing that case has on this case. The facts here are clearly different. Reading the Agreement in the present case as a whole, I do not see how I can possibly read into it a condition precedent that the defendant was to become the registered owner of the land by the date of the final payment by the plaintiff. The intention of the parties was that the plaintiff shall be given possession soon after the plaintiff paid the purchase price, but he was not entitled to and indeed could not possibly be registered as owner until after completion of the purchase under the Principal Agreement had taken place. Clauses 3 and 13 of the Agreement clearly mean that ultimate completion was to depend on completion under the principal agreement.

The learned trial judge found as a fact that the Agreement was fully explained to the plaintiff. That finding of fact has not been challenged, nor do I think it can possibly be challenged in the light of the evidence. The plaintiff knew that the defendant was carrying out an exercise in the fragmentation of a big estate. He knew that the defendant had entered into an agreement with Loy Hean Heong for the purchase of two pieces of rubber land. He knew that it was a portion of those lands which the defendant had agreed to sell to him. He knew that on the date of the Agreement the defendant was not the registered proprietor of those two lands. He knew that the defendant had until 30th November 1967 to pay the major portion of his purchase price to Loy so as to obtain possession on 8th December 1967. He thus knew that he could not possibly obtain possession from the defendant until 8th December 1967. Under the principal agreement Loy had until 28th June 1968 to make his final payment of $100,000. It was only upon this final payment that the defendant could obtain a registrable transfer of the lands from Loy. Thus, if it was not possible for the defendant to obtain possession from Loy until 8th December 1967, how could he give possession to the plaintiff on 20th November 1967, the date on which the plaintiff was obliged to make his final payment? And if the defendant could not become the registered proprietor of the lands until after 28th June 1968, how could he have possibly given a registrable transfer to the plaintiff in respect of the portion of the lands sold to him any earlier? In the circumstances, the plaintiff was clearly in breach of the Agreement by reason of his failure or refusal to pay the balance of the purchase price on or before 20th November 1967 on the ground that the defendant was not then in a position to give a registrable transfer or even on the ground that the defendant was not then in a position to put him into possession.

Clause 10 of the Agreement provided that time wherever stipulated in the Agreement shall always be deemed to be of the essence of the Agreement. The answer to the question as to the date on which the plaintiff was required to make his final payment must

plainly depend upon the true construction of the Agreement, or in other words upon the intention of the parties as expressed in, or to be implied from, the language they had used. In my judgment, the true construction of the Agreement here is that the plaintiff was required to make his final payment on 20th November 1967, irrespective of whether or not the defendant had made his final payment to Loy by that date. Contract differs from most other branches of the law of obligations in one important respect, namely, that generally speaking the parties themselves are free to make their own rules as to what shall and shall not bind them. (See Chitty on Contracts 23rd edition, page 1). The plaintiff had clearly bound himself under the Agreement to make his final payment on 20th November 1967. Once he had committed a breach of that agreement, the defendant was entitled to repudiate the contract and forfeit the deposit under clause 14 of the Agreement The deposit was more than 10 per cent of the purchase price. However, the forfeiture has not been challenged on the ground that the amount forfeited was unreasonable or excessive. Moreover, it was in evidence that the defendant had suffered damages far in excess of the amount forfeited.

For the reasons which I have stated and bearing in mind the decision of the Privy Council in *Linggi Plantation Ltd.* v. *Jagatheesan* on which the learned trial judge based his decision I would dismiss this appeal with costs.

Suffian C.J. and **Ong Hock Sim F.J.** concurred.

Appeal dismissed.

Solicitors: *Muthu & Peri; Michael Chong Ngian Fong & Co.*

RE APPLICATION BY SREEDHARAN

[O.C.J. (Abdul Hamid J.) January 18, 1974]
[Kuala Lumpur — Originating Summons No. 158 of 1973]

Industrial Law — Termination of service of employee — Letter to Minister complaining of arbitrary dismissal — Reference by Minister to Industrial Court — Application for prohibition to prohibit Industrial Court from hearing the matter and for mandamus to direct Minister to consider the matter — Industrial Relations Act, 1967, ss. 16A, 44 and 46A.

In this case the services of the applicant were terminated by his employers on the grounds that he had incited workers to stop work. He sent a letter to the Minister of Labour and Manpower complaining of arbitrary dismissal. The Minister ordered an inquiry to be held and subsequently referred the matter to the Industrial Court under section 16A(9) of the Industrial Relations Act, 1967. The applicant thereupon applied for prohibition to prohibit the Industrial Court from further hearing the case and also for an order of *mandamus* to direct the Minister to consider the matter. It was argued that the Minister had not given due consideration to the provisions of section 46A(1)(d) of the Industrial Relations Act, 1967.

Held: (1) section 46A(1)(d) of the Industrial Relations Act, 1967 did not apply in this case as the applicant was dismissed on the ground of serious misconduct for allegedly inciting the workers to stop work and not on the ground that the applicant being a member of a trade union seeking to improve working conditions was dissatisfied with such working conditions;

(2) the Minister in this case had acted *bona fide* and *intra vires* when he referred the matter to the Industrial Court pursuant to section 16A(1) of the Industrial Relations Act, 1967;

(3) the Industrial Court on receipt of the reference from the Minister under section 16A(1) of the Industrial Relations Act, 1967, had power to hear and determine the case:

(4) the application must therefore be dismissed.

Case referred to:-

(1) *P. Raman* v. *Chairman, Board of Governors, Sekolah Rendah Jenis Kebangsaan Gopeng & Anor.* (1973) 2 M.L.J. 161.

ORIGINATING SUMMONS.

G. Joseph for the applicant.

Faidz bin Mohamad Darus (Federal Counsel) for the respondent.

M. Shankar for the Chemical Company of Malaysia Berhad.

Abdul Hamid J.: This is an application by Navayan alias Sreedharan s/o O. K. Menon of 4½ Milestone, Ipoh Road, Kuala Lumpur, a production supervisor of the Chemical Company of Malaysia Berhad for an order of prohibition to prohibit the Industrial Court from further hearing Case No. 7 of 1973 and for an order of mandamus to direct the Minister of Labour and Manpower to consider the matter complained of in the light of the provision under section 46A(1)(d) of the Industrial Relations Act, 1967.

The applicant was a production supervisor of the Chemical Company of Malaysia Berhad (hereinafter referred to as "the company") before he was dismissed on November 9, 1972. In that year the applicant was also the Secretary of the Kelang Branch of the National Union of Petroleum and Chemical Industry Workers a registered trade union. On October 20, 1972 the members of the union at the company staged a walkout over a dispute which arose as a result of warning letters to two of the members of the union. The protest was organised by the workers of the company. Being the secretary of the Kelang Branch Committee the applicant was asked by the committee to convey to the company its decision and he did convey the message to the works manager of the company.

On October 24, 1972 the production manager of the company handed a letter to the applicant. The letter reads as follows —

"Mr. O.K. Sreedharan,
c/o Chlorine Plana,
C.C.M.

Dear Mr. Sreedharan,

It has been reported that on 20th October 1972 at about 3.10 p.m., you incited the workers to stop work in breach of their contract of service and as a result of which there was a general stoppage of work from 3.30 p.m. on the above date. The allegation mentioned above is a serious misconduct and attracts major punishment. You are hereby required to submit your written explanation within three days of the receipt of this letter, i.e. before 3.30 p.m. on Friday, 27th October, 1972, why disciplinary action should not be taken against you.

Should you fail to give your explanation as required within the stipulated time, it will be presumed that you have no explanation to offer and appropriate action will be taken against you.

Please acknowledge receipt of this letter.

Yours faithfully,
Sgd. Koh Ting Tiew
PRODUCTION MANAGER."